

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THON NGOT SANG,	)	1:05-CV-0628 OWW SMS HC
)	
Petitioner,	)	ORDER GRANTING PETITIONER'S
	)	MOTION TO CHANGE NAME OF
v.	)	RESPONDENT
	)	[Doc. #11]
)	
	)	ORDER DIRECTING CLERK OF COURT
	)	TO CHANGE NAME OF RESPONDENT
A. K. SCRIBNER, Warden,)	
)	
Respondent.	)	ORDER VACATING ORDER TO SHOW
	)	CAUSE DATED AUGUST 2, 2005
	)	[Doc. #8]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 2, 2005, the Court granted Petitioner leave to file a motion to amend the petition to name a proper respondent. On September 6, 2005, Petitioner filed a motion to amend the petition. Petitioner requests that A. K. Scribner, Warden of California State Prison, Corcoran, be named as Respondent in this matter.

A petitioner seeking habeas relief must name the state officer having custody of him as the respondent to the petition. Rule 2(a) of the Rules Governing Section 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir.1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir.1994). Normally, the person having custody of the prisoner is the warden of the prison because

1 the warden has “day to day control over” the prisoner. Brittingham v. United States, 982. F.2d 378,
2 279 (9th Cir.1992). Therefore, Petitioner’s request is proper.

3 Also on August 2, 2005, the Court issued an order directing Petitioner to show cause why the
4 petition should not be dismissed for failure to exhaust state remedies. On September 7, 2005,
5 Petitioner filed a response to the order to show cause. Petitioner contends he did exhaust his state
6 remedies with respect to the claims raised in the instant petition. In support of his contention,
7 Petitioner attaches a copy of the petition for review filed with the California Supreme Court. Review
8 of the petition for review reveals that Petitioner has exhausted his state remedies.

9 **ORDER**

10 Accordingly, Petitioner’s motion for leave to amend the petition to name A. K. Scribner as
11 Respondent in this matter is GRANTED. The Clerk of Court is DIRECTED to change the name of
12 Respondent to A. K. Scribner. Further, the August 2, 2005, Order to Show Cause is HEREBY
13 VACATED.

14 IT IS SO ORDERED.

15 **Dated: September 14, 2005**
16 icido3

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE